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CONTRACTS—SALE OF GOOD-WILL.—Defendant was conducting a private business and decided to incorporate. He did so and turned over all assets to the corporation, no specific mention being made of the good-will. The corporation subsequently became insolvent and was sold to plaintiff, this time with a specific agreement that the good-will was a part of the sale. There was no specific agreement on the part of the defendant in either case to abstain from setting up in the same business and later he did enter the same business. Plaintiff sues to enjoin him. *Held,* (1) That a sale of the good-will was implied; (2) This imposed on seller an obligation to refrain from doing anything to deprive buyer of the benefits of the transaction; (3) The good-will was not a transferable asset of the corporation so as to bind defendant. *C. H. Batchelder & Co. Inc.* v. *Batchelder,* (Mass. 1914), 107 N. E. 455.

By the great weight of modern authority the good will is so important an element in the sale of a business that such sale ordinarily carries with it by implication the good-will although that is not expressly mentioned. *Boon* v. *Moss,* 70 N. Y. 465; *Williams* v. *Farrand,* 88 Mich. 473; *Craver* v. *Acme Harvester Co.,* 209 Ill. 483. It has been held however that a mortgage of the entire assets of a company does not include the good-will if no express mention is made of it. *Santa Fe Electric Co.* v. *Hitchcock,* 9 N. Mex. 156, 50 Pac. 332. The conflict regarding the second point is much sharper. This case holds that it is a question of fact to be found by the jury whether the parties intended that the vendor should refrain from competing in the same business. The weight of authority would seem to be against the rule in this case and to decide as a matter of law that the sale of good-will only is not sufficient to prevent a resumption of business in the same place by the vendor. *Porter* v. *Gorman,* 65 Ga. 11; *Findlay* v. *Carson,* 97 Ia. 537; *Bassett* v. *Percival,* 5 Allen (Mass.) 345; (but see *Munsey* v. *Butterfield,* 133 Mass. 492); *Richardson* v. *Westjohn,* 6 Ohio Dec. 1043. The one restriction is that the vendor cannot hold himself out as continuing the same business. That the corporation has no power to sell the name so as to prevent the defendant from using it again is generally recognized, but it may sell the good-will excepting that. *Ragsdale* v. *Nagle,* 106 Cal. 332.

CONTRACTS—VOID BECAUSE CONTRARY TO STATUTE.—Plaintiff in error agreed to sell to defendant in error a certain tract of land which he did not own, but which belonged to members of the Pottawatomie Tribe. At the time of the agreement an Act of Congress was in force which forbade the alienation of such land by the Indians. As a result plaintiff in error was unable to perform his contract and in the Kansas Supreme Court defendant in error recovered damages for the breach. *Held,* that the contract required an illegal act and was void from its inception. *Sage* v. *Hampe,* (1914) 35 Sup. Ct. 94.

The Kansas court decided the case on the ground that a man may contract to perform something over which he has no present power, especially in regard to the sale of lands. *Globe Refining Co.* v. *Landa Cotton Oil Co.,*

190 U. S. 540. The United States Supreme Court, while admitting the existence of such a doctrine, held that it could not be applied in a case where the agreement was to perform something contrary to the law as declared by the Act of Congress and that it could not be made the ground of a successful suit. *Oscanyan* v. *Winchester Repeating Arms Co.*, 103 U. S. 261. Where the statute merely prohibits without imposing any penalty, as this statute did, there is a conflict of authority as to whether the contract is illegal and void for all purposes. Where the purpose can be accomplished without so holding, Massachusetts and New York hold that the contract is not void entirely. *Bowditch* v. *New England Mutual Life Insurance Co.*, 141 Mass. 292; *Taylor* v. *Bell & Bogart Soap Co.*, 45 N. Y. S. 939. The majority of courts however hold with the decision in this case that it is void. *Harris* v. *Rummels*, 12 How. 79; *U. S. Bank* v. *Owens*, 2 Pet. 527; *Kraemer* v. *Earl*, 91 Cal. 112; *Penn.* v. *Bornman*, 102 Ill. 523. In such cases, "there is a moral obligation on the part of all citizens to obey the law, and courts being organized under the law, it would seem an anomaly were they to sanction a violation of it."

CRIMINAL LAW—BURGLARY—BREAKING.—Defendant was indicted and convicted under the Ohio code for maliciously and forcibly breaking and entering a building in the night time. An instruction was given in effect as follows: If the jury found that the door was partly open and that, in order to effect an entrance, it was necessary to remove the post or brick placed against it to hold it in the position in which it was, and that such removal was made, this would constitute a forcible breaking. *Held*, that the instruction was correct. *Goins et al.* v. *State*, (Ohio 1914), 107 N. E. 335.

The Ohio court repudiates the doctrine that the further opening of a door or window already partly open is insufficient to constitute a breaking, as expressed obiter in *Timmons* v. *State*, 34 Ohio St. 426, and follows the modern trend of the decisions as exhibited in *Claiborne* v. *State*, 113 Tenn. 261; *People* v. *White*, 153 Mich. 617; *State* v. *Sorenson*, (Iowa, 1912), 138 N. W. 411, 11 MICH. L. REV. 320; *State* v. *La Point*, 87 Vt. 115, 12 MICH. L. REV. 231; to the effect that whether the door or window be partially open or not, it is a breaking if any force be necessary to make an entrance. The stricter rule rests upon the decision in *Rex* v. *Smith*, 1 Mood. C. C. 178, and would seem still to be the law in England. 9 LAWS OF ENG. 670. It has been followed to some extent in this country. *Com.* v. *Strupney*, 105 Mass. 588; *Rose* v. *Com.*, 19 Ky. Law Rep. 272. Certain cases, however, which have sometimes been cited in support of the latter doctrine do not go to that length (e. g., *State* v. *Wilson*, 1 N. J. L. 502; *May* v. *State*, 40 Fla. 426). It may be laid down now, contrary to the rule as expressed in some text-books, that the weight of authority in this country is clearly in favor of the holding in the principal case. The modern view is best supported by reason. As pointed out in *State* v. *La Point*, *supra*, it is an anomalous doctrine to say that where a door is partially open this is the folly of the owner, and the law will not undertake to protect by its penalties a man who is not diligent to protect himself. Logically followed such a theory should relieve a sneak-thief from punish-